



5-9-05

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Lubbock, Texas 79416
May 6, 2005

Attention Kien T. Nguyen, Primary Examiner
Commissioner For Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Tel : 703-308-2493

Dear Examiner Nguyen:

Re: Application No: 10/701/202; filing date: 11/04/2003
Inventor: Benjamin Michael Lee

Thank you for your Office communication of 4/26/2005.

We have noted

Status:

2a) FINAL

Disposition of Claims:

- 4) claims 1-3 are pending in the application
- 6) claims 1-3 are rejected

We believe claims 1-3 should be allowed, and we appreciate the opportunity to clarify our position with the additional new information and explanations, as set out below.

Claim Rejections - 35 USC § 102

For convenience we will address your second reason for rejection first:

1) *Re: Claims 1-3 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The claimed invention was introduced by Green Eggs & Hammocks on 10/07/2002 (see attached sheets) which is more than a year from the filing date 11/04/2003.*

Answer:

We have been advised by a patent attorney in the Patent Legal Administration Dept. that even if there was a "public use or sale of the invention" on 10/07/2002 (which we do not agree, for reasons set out in our letter of June 30, 2004), 35 U.S.C. §102(b) does not bar patentability because there was not a gap in time of "more than one year prior to the date of the application for patent in the United States." The alleged "public use or sale" was 10/07/2002. The date of the Provisional Patent Application was 11/21/2002 – only 45 days after the alleged public use or sale. We were advised by the Patent Legal Administration Dept. that the applicant can rely upon the Provisional Application filing date as long as benefit of the Provisional Patent

was claimed in the Specification. Page 2 of the Specification claims the benefit of the Provisional Patent Application Number: 60/428,548.

Further, we were advised that under 35 U.S.C. §102(a) a public use or sale is not a bar even if the alleged public use or sale is more than one year, if the invention is the inventor's own work and he has always owned the invention. We are enclosing a signed statement by the applicant that the applicant is the inventor of the Xchair and that he has always been the owner of the Xchair.

Accordingly, we respectfully request that you withdraw this basis for rejection of claims 1-3.

2) *Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bonnell U.S. Patent 3,344,443.*

Answer:

We respectfully submit that the Xchair is an unobvious invention as required by 35 USC §103, notwithstanding Bonnell, U.S. Patent 3,344,443. While differences alone will not necessarily create unobviousness, if the differences are sufficiently great, they can create unobviousness. We respectfully submit that the differences are sufficiently great in this case, as can be seen when the Xchair is closely compared to Bonnell U.S. Patent 3,344,443. Therefore, we further respectfully submit that 35 U.S.C. §102(b) is not a valid ground for rejecting the application.

Please take a close look at the points that follow because we submit that a close examination will demonstrate that the Xchair is dramatically different from Bonnell, so different that they cannot reasonably be compared to one another, for the following reasons.

1) The most significant difference is that Bonnell is a "single point" *hanging chair stand*, whereas the Xchair is a true "two-point" *hammock chair stand*. (See pages 3-4 of the specification for a description of the difference between a "single point" and a "two-point" hammock stand.) This leads to a difference in kind, not just a difference in degree.

Bonnell is a "single point" hanging chair stand, as opposed to a hammock chair stand. It is true that there are two arm portions (Figure 3) of the stand (2), and two arm portions to the chair (3). However, the arm portions on the stand (2) and the arm portions on the chair (3) both converge at the top and come together as one, so that the chair (3) is suspended from a single point, thus making it a "single point" hammock chair stand.

As a result, the Bonnell chair could not function as a true hammock sling stand. Bonnell (Figure 2) shows a seat-sling (9) encircled by a rigid tubular frame (6). In the absence of the rigid frame (6) if a two-point hammock sling were suspended from the top of the Bonnell stand (4) a person sitting in a two-point hammock sling would be squeezed beyond discomfort. Again, a hanging chair stand is to be differentiated from a hammock chair stand.

By comparison the Xchair support members (200 and 202) are coupled at the intermediate section (208A and 208B) (not the upper section as in Bonnell). The separate support members then arch over and spread out from each other to accommodate a true two-point hammock sling. The separated support members (200 and 202) prevent the hammock sling from collapsing, and therefore the occupant is not squeezed.

Thus, functionally, the two stands are dramatically different. Bonnell supports a single-point hanging chair with a rigid frame. Xchair supports a true two-point hammock chair sling, which has no rigid support members, and does not need them.

2) The dynamics of the two stands are also very different. That is, the configuration of Bonnell is such that the center of gravity of the occupant requires a support bar (8) to keep the stand in balance.

By comparison, the Xchair suspends the hanging chair in such a way that the center of gravity of the occupant is counterbalanced by the orientation of the legs and upper arms without an additional rear support member as shown in the Bonnell patent (8).

3) With regard to obviousness, please note the comment on page 5, paragraph 3, of the specification regarding prior art two point stands: "... one can easily see from Illustrations ... that prior art two point stands are merely a version of the full-length hammock support stand. That is, ... Illustrations ... show that each of these prior art stands have been made by folding up, or shortening, a full-length hammock support stand, thereby converting it to hold a hanging chair." This process describes the Bonnell stand. By concept it is effectively made by "folding up ... a full-length hammock support stand," coupled at the top (4), and at the bottom with a cross-bar (8).

By contrast the Xchair is constructed from two separate and separated support members and feet, coupled only at one point, namely at the intermediate section (208A & 208B). The Xchair in concept is not created by converting a hammock support stand into a hanging chair, as is Bonnell. At this point a close examination will show that the Xchair is totally different from Bonnell in concept, structure and function.

By comparison the Xchair is, in a sense, the complete converse to Bonnell. A comparison of the two side-by side shows they are not only very different in concept and configuration, but that they are very different functionally.

Thus, the Xchair is not just different, but it is so dramatically different in kind that it cannot reasonably be said that Bonnell anticipates the Xchair.

When compared against all prior art, we respectfully submit that the Xchair meets the unobvious test. 35 U.S.C. Section 103.

For these reasons, we respectfully submit that it is not proper to reject claim 1 under 35 U.S.C. 102(b) as being anticipated by Bonnell U.S. Patent 3,344,443. We respectfully request

that you withdraw this basis for rejection of claim 1.

Accordingly, for the foregoing reasons, we respectfully request that your rejection of claims 1-3 be withdrawn and that a patent be issued on this application.

We appreciate your attention and cooperation.

Sincerely,


Dellas W. Lee

Enclosures:

Letter confirming ownership.

Postcard acknowledging receipt.

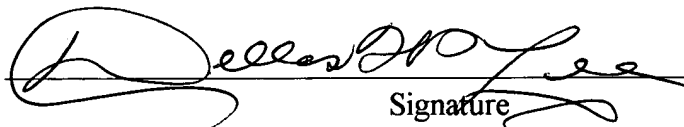
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify this correspondence is being:

- Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

5-6-2005

Date


Signature

Dellas W. Lee

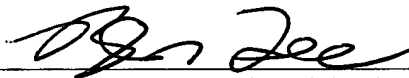
Typed or printed name of person signing certificate

May 6th, 2005

To attention of Kien T. Nguyen, Primary Examiner:

Re: Application/Control Number: 10/701,202; Art Unit: 3714
filing date: 11/04/2003; Inventor: Benjamin Michael Lee

This is to certify that the invention is the inventor's own work, the work of Benjamin Michael Lee, the applicant herein, and further that I have always owned the invention, and that I have met all the requirements of 35 U.S.C. §102(a).

A handwritten signature in black ink, appearing to read "Ben Lee", is written over a horizontal line.

Benjamin Michael Lee